

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

WELLS FARGO BANK N.A.,	:	APPEAL NO. C-140098
	:	TRIAL NO. A-1104667
and	:	
FEDERAL HOME LOAN MORTGAGE CORPORATION,	:	<i>JUDGMENT ENTRY.</i>
	:	
Plaintiffs-Appellees,	:	
vs.	:	
SUZANNE C. ERNST,	:	
and	:	
DONALD W. ERNST,	:	
Defendants-Appellants.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Raising a single assignment of error, defendants-appellants Suzanne C. Ernst and her husband Donald W. Ernst, contest the trial court's entry of summary judgment in favor of plaintiffs-appellees, Wells Fargo Bank, N.A., and the Federal Home Loan Mortgage Corporation ("Freddie Mac"), on their foreclosure action.

In 2007, the Ernsts purchased a home on Alta Vista Avenue in Cincinnati. To finance the purchase, the Ernsts executed a note in the amount of \$92,800 in favor of Wells Fargo. The note was secured by a mortgage in favor of Wells Fargo. It is undisputed

that the Ernsts defaulted on their repayment obligations as the borrowers under the note and mortgage.

In 2009, Wells Fargo filed an action seeking judgment on the note and foreclosure on the mortgage. Following a trial-court ruling that Wells Fargo was required to join Freddie Mac as a party, Wells Fargo dismissed the action without prejudice. In June 2011, Wells Fargo filed this action with Freddie Mac and attached the original mortgage and note to its complaint.

In May 2012, Wells Fargo and Freddie Mac moved for summary judgment. The affidavit of Wells Fargo's vice-president for loan documentation was filed in support of the motion. She stated that Wells Fargo was the holder of the note and the mortgage. Attached to her affidavit was a copy of the note, now indorsed in blank. *See* R.C. 1301.201(B)(21)(a) and 1303.25(B). The Ernsts filed a Civ.R. 56(F) motion for additional time to conduct discovery. The trial court ultimately granted a 60-day extension, which the parties extended by agreement for an additional 14 days.

During the additional-discovery period, Wells Fargo answered interrogatories stating that it was the holder of the note. The Ernsts and their counsel inspected the blank indorsement on the note and questioned its genuineness. They indicated their intention to obtain a document examiner but failed to do so during the discovery period. Instead, they sought an additional 90-day extension. On September 3, 2013, the magistrate denied the Ernsts' second request for additional time to conduct discovery. The Ernsts did not file an objection to the magistrate's decision, and the trial court adopted the magistrate's decision.

On September 24, 2013, the magistrate granted summary judgment in favor of Wells Fargo and Freddie Mac. The Ernsts filed objections outside the 14-day filing period. The trial court struck those objections. On January 23, 2014, the trial court adopted the

magistrate's decision and granted summary judgment in favor of Wells Fargo and Freddie Mac.

In their sole assignment of error, the Ernsts argue that the trial court erred in adopting the magistrate's decisions denying their second request for additional time to conduct discovery and entering summary judgment.

Generally we review the denial of a properly preserved ruling on a Civ.R. 56(F) motion under an abuse-of-discretion standard. *See Anginoli v. The Benenson Capital Co.*, 1st Dist. Hamilton No. C-980811, 1999 Ohio App. LEXIS 6218, *7 (Dec. 23, 1999). But because the Ernsts failed to file an objection to the magistrate's factual or legal conclusions denying their motion for additional time, they have waived error on appeal, except for plain error, a doctrine that is rarely applied in civil appeals. *See* Civ.R. 53(D)(3)(b)(iv); *see also In re Jones*, 1st Dist Hamilton Nos. C-090497, C-090498, and C-090494, 2010-Ohio-3994, ¶ 32 (applying the analogous Juv.R. 40(D)(3)(b)(iv)).

This is not one of those “extremely rare” cases in which failure to reach the claimed error “seriously affects the basic fairness, integrity, or public reputation of the judicial process.” *See Goldfuss v. Davidson*, 79 Ohio St.3d 116, 679 N.E.2d 1099 (1997), syllabus; *see also Gable v. Gates Mills*, 103 Ohio St.3d 449, 2004-Ohio-5719, 816 N.E.2d 1049, ¶ 43. There are no such exceptional circumstances here. Two and one-half months after the trial court had granted them additional time to examine the genuineness of the blank endorsement, the Ernsts had not obtained a document examiner and offered no justification either for their failure to do so, or for the additional 90-day extension they had sought.

Similarly, a trial court's granting of summary judgment is ordinarily reviewed de novo. *See Comer v. Risko*, 106 Ohio St.3d 185, 2005-Ohio-4559, 833 N.E.2d 712, ¶ 8. But despite a conspicuous warning at the end of the magistrate's summary-judgment decision

that objections must be filed within 14 days and that the failure to do so would waive all but plain error, the Ernsts, represented by experienced counsel, did not file their objections within time. *See* Civ.R. 53(D)(3)(a)(iii). They have waived all but plain error. *See* Civ.R. 53(D)(3)(b)(iv).

Again, this was not the “extremely rare” case demanding reversal in the absence of a timely filed objection to the magistrate’s conclusion that Wells Fargo and Freddie Mac were entitled to judgment as a matter of law on their complaint in foreclosure. *See* Civ.R. 56(A); *see also HSBC Bank USA v. Sherman*, 1st Dist. Hamilton No. C-120302, 2013-Ohio-4220; *Goldfuss* at syllabus. The assignment of error is overruled.

Therefore, the trial court’s entry granting summary judgment is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., FISCHER and DEWINE, JJ.

To the clerk:

Enter upon the journal of the court on October 29, 2014

per order of the court _____.
Presiding Judge